

Not 9/7/86-6 Lab./5764.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the Workman and The Management of M/S. Haryana Roadways, Hissar.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 16 of 1984

between

SHRI BIKKAR SINGH, WORKMAN AND THE MANAGEMENT OF M/S. HARYANA
ROADWAYS, HISSAR

Shri S. S. Gupta, A.R., for the workman.

Shri Jagbir Singh, A.R., for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-sectional (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, between the workman Shri Bikkar Singh and The Management of M/s Haryana Roadways, Hissar, to this Court, for adjudication,—vide Haryana Government Gazette Notification No. 7759—64, dated 23rd February, 1984:—

Whether the termination of services of Shri Bikkar Singh, is justified and in order ? If not, to what relief is he entitled ?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The claim of the petitioner is that he was working with the respondent as a Conductor for the last about eleven years, whose services were terminated by the respondent,—vide order dated 5th March, 1982, which was passed after holding a farce of an enquiry, in which, he was not given any opportunity of participation, because the petitioner was on sick leave and later on his brother died and as such he had applied for adjournment of the proceedings to the Enquiry Officer who did not do so and as such, he was deprived of an opportunity to participate in the enquiry proceedings, which were conducted *ex parte*. So, he has challenged the vires of the enquiry proceedings and the order of termination passed on the basis of the same.

3. In the reply filed by the respondent, preliminary objections taken are that the present reference is not maintainable and that the management have since lost confidence in the workman, who was terminated after a proper and fair enquiry was conducted. In the alternative, it is pleaded, that, in case the enquiry is found to be defective, the management be allowed to lead evidence on merits. The reply on merits, runs on the same lines and as such, I need not suffer repetition.

4. On the pleadings of the parties, the following issues were settled for decision by me on 27th November, 1984 :—

1. Whether the reference is bad in law ? OPR.
2. Whether the management has lost confidence in the workman ? OPR.
3. Whether a valid and proper domestic enquiry was held by the respondent ? OPR.
4. As per terms of reference.

5. The management examined MW-1 Shri Ramesh Kumar, clerk, MW-2 Shri Dhanpal Singh, Station Supervisor, MW-3 Shri Rajbir Singh, Traffic Manager, who conducted the enquiry proceedings, MW-4 Shri Nafe Singh, Inspector and MW-5 Shri Inder Singh, duty clerk. The workman examined MW-1 Shri Swaran Kumar, Mechanic, Haryana Roadways, Hissar, WW-2 Dr. K.L. Jaggal, Medical Officer, Narnaul and himself appeared as WW-3.

6. Authorised Representatives of the parties heard.

Issue No. 3.

7. Enquiry in this case was conducted by Shri Rajbir Singh, Traffic Manager, who was examined as MW-2. Admittedly enquiry was conducted *ex parte*. Admittedly there is no evidence on record that the service of the petitioner was effected to face the enquiry proceedings on 28th December, 1981. Before

starting enquiry proceedings *ex parte* no order has been passed by the Enquiry Officer as to why the workman is not present in spite of service. He has simply recorded the absence of the workman on 28th December, 1981. The learned Law Officer of the respondent Shri Jagbir Singh contended that there are no reasons to disbelieve the statement of MW-5 Shri Inder Singh, duty clerk, who stated that he had delivered a letter regarding domestic enquiry to the petitioner against his signature on the despatch register Ex. MW-5/1. The case of the petitioner is that on the date enquiry proceedings were fixed, he was indisposed and in support of this he has relied upon statement of WW-2. K.L. Jaggal, who stated that on the said date he was posted as Medical Officer, Civil Hospital, Hissar and on the said date, he had examined the petitioner as an out-door patient, who was suffering from acute gastritis and advised him to take treatment and to abstain from active duties in case of pain in movements. The petitioner Shri Bikkar Singh stated that on the date of enquiry, he had developed pain in the abdomen and had visited the hospital around 11.00 A.M. and that he had gone to the hospital after informing Head Mechanic and had delivered an application for adjournment to the Steno of the General Manager. I have no reason to disbelieve that the petitioner was in known of the date of enquiry, i.e. 28th December, 1981. Now, the question would be as to whether the Enquiry Officer was justified in proceeding *ex parte* against the petitioner. In my opinion, he was not. Heavens would not have fallen, in case, he had adjourned the proceedings to some other short date. The statement of Shri Rajbir Singh, Enquiry Officer that the petitioner was spotted loitering outside the workshop campus, cannot be believed, because the petitioner had no reason to avoid the enquiry proceedings. His assertion that the petitioner did not come in spite of the fact that he was sent for by him is also not believable, because a Conductor of the State Transport can hardly afford to defy the Traffic Manager at whose mercy he always is. Further more, the reasons given by the Enquiry Officer before the Court for proceeding *ex parte* were not recorded by him at the start of enquiry proceedings. It is simply recorded that the petitioner is not present and that the witnesses of the management were present and the Enquiry Officer choose to record their statements on the same day and submitted his findings to the General Manager on 30th December, 1981 i.e. within two days of the recording of the enquiry proceedings. That shows that the Traffic Manager who was also appointed as Inquiry Officer in this case, was in an unholy hurry to go through the enquiry proceedings, oblivious of the fact that the same may effect the livelihood of a person. Under these circumstances, I have no hesitation in holding that the Enquiry Officer was not justified in proceeding *ex parte* against the petitioner and on this ground alone the enquiry findings are liable to be set aside and it safely held that the findings recorded by the Enquiry Officer after proceeding *ex parte* against the petitioner was not fair and proper and so, this issue is answered against the management.

Issue No. 1

8. This issue was not pressed on behalf of the respondent. It could not be made out as to how the reference is bad in law, because through the present reference the petitioner has challenged the order of termination, which according to him was arbitrary and unlawful.

Issue No. 2 and 4

9. These issues have been clubbed together for decision, since they cannot be disposed of in isolation. There are three charges against the petitioner. It is alleged that on 22nd May, 1981 when the petitioner was Conductor on bus number 5140 bound from Dabwali to Hisar, was checked at village Dhanger and three passengers were found travelling without tickets from Fatehabad to Dhanger from whom the petitioner had collected the fare and as such, embezzled a sum of Rs. 240. On 14th June, 1981 the petitioner was Conductor on bus number 5235 and the checking was done by Shri Dhanpal Singh, Chief Inspector, along with Shri Partap Singh, Inspector. The bus was bound from Amritsar to Hisar. Checking was done near Civil Hospital, Hisar. Four passengers were found travelling without tickets from Tohana to Hisar, to whom the petitioner had issued tickets worth Rs. 5.90 each, though the actual fare was Rs. 6.90 each and thereby caused a loss of Rs. 4.00 to the respondent Roadways. Similarly on 20th July, 1981 the petitioner was checked on bus number 5017. The same was checked by Shri Rohtash Chander, Adda Incharge near the turn of village Bhuthan. Five passengers were travelling without ticket. Who had boarded the bus from Bari Bhuthan and from whom the petitioner had collected a sum of Rs. 2.50 without issuing tickets. To prove these allegations the management has examined Shri Dhanpal Singh, Chief Inspector as MW-2 and Nafe Singh, Inspector as MW-4. Their statements relate to the two charges of Rs. 240 and Rs. 4.00. The workman when he appeared in the Court as WW-3 did not utter a single word to rebut these allegations. So, in a way the petitioner accepted his misconduct. Now, the question would be as to whether interference by this Court under section 11-A of the Industrial Disputes Act, 1947 is called for or not. Powers of the Labour Court or Tribunal under section 11-A though untrammelled cannot be exercised in a whimsical way. This Court has already held that *ex parte* enquiry conducted against the petitioner was fair and proper but the management has chosen to adduce evidence on merits, which cannot be easily ignored. This Court is aware of the fact that there is rampant corruption in all ranks of the State Transport and to single out a humble functionary of the State Transport for harsh punishment would not be desirable but the observations made by the Hon'ble High Court of Punjab and Haryana in a recent authority reported in 1984 (3) SLR 514 *State of Punjab and others Vs. Surat Singh and others* has got a binding force upon this Court. In the case under reference the Amount embezzled by the Conductor was about Rs. 6.00. His Lordship of the Hon'ble High Court

of Punjab and Haryana relying upon the full bench authority of the Gujrat High Court observed that Conductors of the State Transport indulging in embezzlement of Government money should not be lightly reinstated and that the Court should explore the possibility of providing them alternative employment. In the present case, enquiries were made from the Law Officer of the respondent as to whether the petitioner can be put on other job. The Court was informed that he cannot be accommodated without dislodging employees already in employment. Under these circumstances, relief of reinstatement cannot be granted to the petitioner and that this Court cannot interfere with the order of termination. So, the workman is not entitled to any relief. The reference is answered and returned accordingly with no order as to cost.

Dated 29th May, 1986.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.
Camp Court, Sonapat.

Endorsement No. 16-84/849, dated 24th June, 1986.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sonapat.

No. 9/7/86-6 Lab./5766.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Haryana Roadways, Sirsa.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 95 of 83

between

SHRI DILBAG SINGH, WORKMAN AND THE MANAGEMENT OF M/S HARYANA
ROADWAYS, SIRSA

Present.—

Shri S.N. Vats, A.R. for the workman.

Shri V. K. Kohli, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the workman Shri Dilbag Singh and the management of M/s Haryana Roadways, Sirsa,—*vide* Haryana Government Gazette Notification No. 30975-79, dated 30th June, 1983 :—

Whether the termination of services of Shri Dilbag Singh was justified and in order ? If not, to what relief is he entitled ?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The demand notice filed in this case is very creptic, so facts of the case have been derived from the Claim Statement filed in the court. It is alleged therein that the petitioner was employed in the year 1974 as a conductor and his services were terminated unlawfully on 31st December, 1980 (wrongly alleged 31st December, 1983 in the Claim Statement). The termination has been challenged on the ground that the enquiry held in this case was illegal, not fair and proper and that the procedure followed in holding the same was not in consonance with the principles of natural justice. It is alleged there in that the General Manager without passing any speaking order rejected the reply to the charge-sheet being unsatisfactory and that no notice regarding fixation of date of enquiry was given to the petitioner by the Enquiry Officer, nor the petitioner was afforded any opportunity to prepare his defence and that the enquiry Officer hustled through the enquiry proceedings in a single day to the detriment, who was himself acting as a prosecutor as well as a Judge and that the gist of the allegations conveyed

to him were vague because allegations were based on trumped up charges. He has further denied that he mis-behaved with the checking staff as alleged and that the order of termination is not a speaking order. So, he has alleged that the same being illegal and unlawful, it be set aside and he be reinstated with continuity of service and full back wages.

3. In the reply filed by the respondent, most of the allegations made in the Claim Statement have been controverted. It is denied that the enquiry was not valid and proper, in which, the petitioner was not given complete opportunity of participation or that the Enquiry Officer was biased in favour of the management.

4. On the pleadings of the parties, the following issues were settled for decision by me on 30th July, 1984 :—

(1) Whether a proper and valid enquiry was held by the respondent ? OPR.

(2) As per reference.

5. The management examined MW-1 Shri Shyam Lal Wadhwa, clerk, Haryana Roadways, Sirsa, MW-2 Shri Dayal Singh, Inspector, MW-3 Shri Kewal Krishan, Inspector, MW-4 Shri N. K. Sharma, who conducted the enquiry proceedings, MW-5 Shri Sant Kumar Joshi the then General Manager, Haryana Roadways, Sirsa. On the other hand, the petitioner in support of his claim appeared as MW-1 and examined WW-2 Shri Ram Bhagat, Driver, WW-3 Shri Randhir Singh.

6. Learned Authorised Representatives of the parties heard.

Issue No. 1 :

7. Certified copies of the enquiry proceedings have been placed on record by the respondent. I have gone through the same. Contrary to the pleas taken by the petitioner that he was not given complete opportunity of participation, a perusal of the proceedings will show that the petitioner all through participated in the same, cross examined the witnesses examined by the management. He was given opportunity to produce his defence and the findings recorded by the Enquiry Officer are detailed one, in which after detailing the evidence recorded during enquiry proceedings, the same has been properly appraised. So, it cannot be held that there was any denial of justice to the petitioner and so the procedure followed by the Enquiry Officer was regular and in consonance with the principles of natural justice. It is a matter a part that the enquiry did not embrace the entire incident which took place on the date when the checking was made by the Inspectorate Staff. This part of the controversy, I shall take up while disposing of issue No. 2. So, this issue to this extent goes in favour of the management.

Issue No. 2 :

8. This issue cannot be disposed of without giving a brief resume of the allegations of misconduct against the petitioner. The checking was done on 10th August, 1980. The petitioner was conductor on bus number 5370. The Checking Squad consisted of S/Shri K. K. Chabra and Dayal Singh. The same was made on the bye-pass leading to Dadri. The bus was heading from Rewari to Dabwali. It is alleged in the complaint made by the Inspector after checking that forty one passengers were travelling without tickets not properly issued. Some passengers were holding tickets less than the fare chargeable. Some passengers were holding tickets not properly punched. To some passengers old tickets have been issued. Some passengers holding tickets, which were not punched at all. The Checking Staff reported that the petitioner tried to embezzle a sum of Rs 143.70. A detailed report was prepared by them and submitted to the General Manager, Haryana Roadways, Sirsa. The same is Ex. MW-2/a, prepared by Shri K. K. Chabra and signed by Shri Dayal Singh, Inspector also. A detailed reply filed by the petitioner to the charge-sheet is Ex. MW-5/2. Therein he alleged that there was no embezzlement of Government money and that the Checking Staff was not in know of the actual fare chargeable and that they were biased against the petitioner and earlier also, they had made written reports against him, because he did not oblige them with illegal gratification at their asking and that at the time of checking both the Inspectors were heavily drunk. He further alleged that they tried to snatch cash bag from him, which he resisted and some altercation ensued attracting a large crowd and that the Driver Shri Ram Bhagat intervened on his behalf and that he wanted to report the matter to the police but was dissuaded from doing so by the Inspectors on the ground that the same shall attract unsavoury publicity for the department and that the said incident was got amicably patched

up leading to the recording of a document Ex. W-1 and in support of his plea the petitioner examined WW-2 Shri Ram Bhagat, Driver of the bus on that date. He stated that at the time of checking the bus was over loaded with about seventy passengers and that the same reached at the Bus stand Dadri within ten minutes after the Checking Staff boarded the same near the bye-pass and that he saw both the Inspectors putting their hands in the cash bag with the Conductor and that he was told by the Conductor, who is the petitioner that the Inspectors were asking for illegal gratification and that both the Inspectors were heavily drunk and in the mean time a Constable came beside one Shri Randhir, who was examined as WW-3 and that all went to the nearby Hotel where the incident was amicably settled through a deed Ex. W-1. His version has been supported by WW-3 Shri Randhir Singh also. The existence of Ex. W-1 is not denied by Shri Sant Kumar Joshi, the then General Manager, who was examined as MW-5. He further stated that as per his verification the same was procured by force by the petitioner and the Police, who had the support of certain hooligans with him and that he addressed a memo in that behalf to the Superintendent of Police concerned. He further admitted that he had not kept any record about the said enquiry conducted by him. He could not state as to what was the result of the memo addressed to him to the concerned Superintendent of Police. In the deed Ex. W-1, which is not elegantly worded, it is recorded that on 10th August, 1980 bus number 5378 was heading from Rewari to Dabwali. The same bus was checked near Dadri by the local Flying Squad and that because of the Mela being organised at Bagot, there was rush of passengers, so he could not issue tickets to certain passengers, which led to a quarrel with the Inspectors but later on after clarification the matter was sorted out and that now no rancour remains. The said deed is signed by both the Inspectors, one Randhir Singh, the Driver, one Constable beside the petitioner. Now, the question would be that had the Checking Staff found forty one passengers not holding valid tickets at the time of checking, there was no question of their putting their signatures on the said deed Ex. W-1. It is also the case of the respondent that the petitioner had given a tooth bite to Shri Dayal Singh Inspector and that he snatched away the way bill and also the tickets collected from the passengers. If all this had happened with the Checking Staff, they would have been reluctant to put their signatures upon the documents which speaks all facts different than the one narrated by them in the Court. That would mean that the scope of the enquiry did not embrace the plea of the petitioner, though, the petitioner had taken this stand during the enquiry proceedings also. The version given by the petitioner has also been supported by the Driver of the Bus Shri Ram Bhagat and one Shri Randhir. The law is settled that when from the evidence on record two interpretations are possible, the one which supports the week should be accepted. This part of the controversy has not at all been gone into by the Enquiry Officer, though the management was in know of the fact that such a document has been executed, though it is alleged that the same was procured by force by the petitioner with the help of the police. Under these circumstances, the harsh punishment of termination awarded to the petitioner was not justified. Ends of justice, would have been met, in case, the petitioner had been awarded lesser punishment of stoppage of increments or other penalty. Under these circumstances, interference by this Court under section 11-A of the Industrial Disputes Act, 1947 is called for, because in view of the facts detailed above, harshest penalty of termination was glaringly disproportionate in relation to the alleged misconduct of the petitioner and that the Enquiry Officer failed to ferret out the full facts during the enquiry proceedings. Under these circumstances, order of termination is set aside. The petitioner is ordered to be reinstated, but he cannot be let off easily on the question of back wages, because his conduct too was not blemishless during the incident, which took place. So, I award him back wages to the extent of 25% only. However, he shall have all benefits of continuity of previous service. The reference is answered and returned accordingly with no order as to cost.

Dated the 12th June, 1986,

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Hissar.

Endst. No. 95-83/851, dated the 24th June, 1986.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Of
Labour Court,
Camp Court, H